



September 30, 1999

Ms. Judy Ponder
General Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR99-2774

Dear Ms. Ponder:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127714.

The General Services Commission ("GSC") received a request for information from the State of Oklahoma's Central Purchasing Division. The request is for documentation regarding Allied Equipment, Inc.'s ("Allied") application for and failure to qualify as a Historically Underutilized Business. You explain that GSC has in its possession "Allied's application as well as correspondence received from Oklahoma's Central Purchasing Division, which was presumably sent to GSC per Allied's request in order to support the company's application." You contend that these documents are excepted from disclosure under section 552.127 of the Government Code. We have considered the exception you claim and reviewed the documents at issue.

Section 552.127 of the Government Code provides:

(a) Information submitted by a potential vendor or contractor to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business under a local, state, or federal certification program is excepted from [required public disclosure], except as provided by this section.

(b) Notwithstanding Section 552.007 and except as provided by Subsection (c), the information may be disclosed only:

(1) to a state or local governmental entity in this state, and the state or local governmental entity may use the information only:

(A) for purposes related to verifying an applicant's status as a historically underutilized or disadvantaged business; or

(B) for the purpose of conducting a study of a public purchasing program established under state law for historically underutilized or disadvantaged businesses; or

(2) with the express written permission of the applicant or the applicant's agent.

(c) Information submitted by a vendor or contractor or a potential vendor or contractor to a governmental body in connection with a specific proposed contractual relationship, a specific contract, or an application to be placed on a bidders list, including information that may also have been submitted in connection with an application for certification as a historically underutilized or disadvantaged business, is subject to required disclosure, excepted from required disclosure, or confidential in accordance with other law.

We agree that section 552.127 applies to the information submitted to GSC in connection with Allied's application for certification. We have marked this information accordingly. Subsections (b) and (c) of section 552.127 are not applicable in this situation. Therefore, we conclude that GSC must withhold the marked information from disclosure under section 552.127(a) of the Government Code. The information that was not *submitted* to GSC is not within the scope of section 552.127 and must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 127714

Encl. Marked documents

cc: Ms. Vivian G. Pegues, Administrator
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(w/o enclosures)